

Proposed changes
Calaveras County Superior Court Local Rules
Effective July 1, 2009

1.3 Effective Date of Rules *(Eff. 7/1/98; As amended, eff. 1/1/09.)*

These Rules shall take effect on **January July** 1, 2009. *(Eff. 7/1/98; As amended, eff. 1/1/09.)*

2.1 Filing and Format of Documents *(Eff. 7/1/98; As amended, eff. ~~4/1/08~~ 7/1/09.)*

(a) All papers submitted for filing shall conform to California Rules of Court, Rule 2.100 through 2.119. The clerk will endorse up to three copies of each document filed. It is recommended that all original signatures be in blue ink.

(b) Except where leave of court has been granted, the clerk shall not accept for filing any papers, documents, exhibits or dividers presented on pink or yellow paper.

(c) Documents may be submitted for filing as follows: in person at the clerk's filing window; **by depositing the documents into the drop box located adjacent to the clerk's filing window; or by mailing them to the court.**

~~(d) Documents deposited in the drop-off box must be in a sealed envelope and accompanied by the appropriate filing fee and a self-addressed stamped envelope if return conformed copies are desired. Filings and pleadings deposited in the drop box prior to 4:00 p.m., Monday through Friday, except court holidays, will reflect the date of deposit. Documents left in the drop box after 4:00 p.m. will be filed as of the following court business day. Matters requiring immediate judicial attention should never be placed in the drop-off box.~~
(Eff. 7/1/98; As amended, eff. ~~4/1/08~~ 7/1/09.)

2.5 Sealed / Confidential Records *(Eff. 1/1/02; As amended eff. ~~4/1/08~~ 7/1/09.)*

Unless confidentiality is required by law, court records in both criminal and general civil cases are presumed to be open to the public for inspection. For all records filed where confidentiality is required by law, the document caption or title shall state "CONFIDENTIAL" with an accompanying citation to the applicable law requiring such confidentiality. An agreement or stipulation between the parties for confidentiality or sealing of a document filed with the court is legally insufficient. The law requires court findings prior to sealing any records. The party filing a "confidential" report shall, at the time of filing the document, submit an 8 ½ by 11 inch envelop with the document title, case number and the word "confidential" printed prominently on the outside. For any court record a party wishes to be "sealed" from public inspection, the party shall follow those procedures set out in California Rules of Court, Rule 2.551. **The party requesting a record be sealed must submit a proposed order containing no confidential information as this order will be filed in the public portion of the file.** *(Eff. 1/1/02; As amended eff. ~~4/1/08~~ 7/1/09.)*

2.13 Coordination of Personal Conduct Orders *(Eff. 1/1/04; As amended eff. 7/1/09.)*

(a) Prior to the hearing of any matter where there is pending a request for orders involving child custody or visitation, the court clerk, pursuant to local court procedure, must perform a case index search to determine whether there exists a criminal court protective order that involves any party to the action. Should such an order exist, the criminal court file must be forwarded to the department determining the request for orders involving child custody or visitation.

(b) Prior to the hearing of any matter where it is anticipated that a criminal protective order will be requested, the court clerk, pursuant to local court procedure, must perform a case index search to determine whether there exists any child custody or visitation orders that involve any party to the action. If there is such an order, the civil court file must be forwarded to the department determining the request for criminal protective order.

(c) In hearing any matter where a personal conduct restraining order is at issue, the judicial officer shall make a reasonable inquiry about the existence and terms of any domestic violence or child custody or child visitation or criminal protective orders involving any party or victim or witness in the action currently before the Court. *(Eff. 1/1/04; As amended eff. 7/1/09.)*

3.2 Proof Of Service of Summons *(Eff. 7/1/98; As amended eff. 7/1/09.)*

A separate Proof of Service **of Summons**, approved Judicial Council form ~~Rule 982(a)(23)~~ **POS-010** shall be filed for each defendant/cross-defendant. *(Eff. 7/1/98; As amended eff. 7/1/09.)*

3.7 Unlawful Detainer Settings *(Eff 1/1/09; As amended eff. 7/1/09.)*

A request or counter-request to set a case for trial must be completed on Judicial Council form UD-150 where at least one defendant has filed an answer. If the plaintiff indicates right to possession is no longer an issue, the matter will be set on the Case Management Calendar **at 1:30 p.m.** within approximately 30 days. If either party indicates the right to possession of the premises is an issue, the matter will be set for trial, not more than 20 days from the date the request to set for trial is filed. Notice of the date and time must be mailed by the clerk of the court to all parties at least 10 days prior to the date of trial. If a counter-request to set for trial is filed after notice of trial has been mailed, the clerk of the court will review the counter-request to determine whether it contains any information that would impact the trial date; and, if so, will refer it to a Judicial Officer for further direction or order. *(Eff 1/1/09; As amended eff. 7/1/09.)*

3.9 Clerk's Transcript on Appeal *(Eff. 7/1/02; As amended eff. 1/1/09.)*

No changes moved and renumber as 8.3

5.2 Setting Family Law Motion Hearings (*Eff. 1/1/03; As amended eff. ~~4/1/08~~ 7/1/09.*)

(a) Introduction. Generally, family law motions are set for a court hearing date which is approximately four weeks after the moving party files the motion paperwork with the court (See “Standard Practice” below). Only under exceptional circumstances may the four week “notice period” between filing of the motion paperwork and the date for hearing be shortened (See “Special” and “Emergency Situations” below). The purpose of the notice period is to allow the other party who has been served with the motion paperwork to consider the matter and file and serve a response (See “Service” and “Filing” sections below). The delay between initial filing and the court hearing also provides parties on a child custody motion the time to attend orientation and mediation prior to the court hearing date (See “Mediation” section below). The court expects both sides to have attempted to resolve each issue raised by the moving and responding paperwork prior to attending the court hearing (See “Meet and Confer” section below). At the court hearing the judge will generally make a determination on the motion based upon the evidence found in the moving and responding papers (See “Hearing” section below).

(b) Standard Practice- Regularly Noticed Hearing. The moving party for any regularly noticed motion or order to show cause (without temporary orders) shall choose a convenient hearing date and enter the requested date on the moving papers along with the appropriate time and department. Hearings on Family Law motions or orders to show cause are regularly heard on Tuesdays at 9:00 am in Department 1. In selecting the requested hearing date, the moving party must observe filing and service time lines of the Code of Civil Procedure § 1005. That law requires filing the moving papers at least 16 court days prior to the hearing date and where a motion is served by mail (orders to show cause must be personally served) the 16 court days does not start until 5 calendar days after the date of mailing. Motions or orders to show cause involving child custody and visitation, where no temporary orders have issued, will generally be set approximately ~~forty five (45)~~ **thirty (30)** calendar days from the date of initial filing so that mediation may be completed prior to the hearing. If the court rejects the requested date, time and/or department entered on the moving papers, the court clerk will so advise the moving party who is then responsible for providing the responding party with adequate notice of the new date, time and/or department for the hearing.

(c) Special Situations – Shortening Standard Time for Hearing. An order shortening time for service of notice and hearing (per CCP § 1005) will only be granted where the application is supported by a declaration demonstrating good cause to shorten the regular notice period.

(d) Emergency Situations – Temporary Orders Upon 1 Day Prior Notice of Hearing. To request an ex-parte hearing you must telephone the court clerk at (209)754-~~6310~~ **9800** no later than 2:00 pm the court day prior to the requested hearing date. The moving party’s pleadings should be filed with the court no later than 4:00 pm the court day prior to the ex-parte hearing. Ex-parte applications for temporary orders are only granted where strict compliance with California Rules of Court, Rule 3.1200 through 3.1207 is demonstrated by the moving papers. Applicants requesting an ex-parte hearing should complete local form “*Application for Immediate Court Hearing and Order*” [Local Form A-1] which is filed with the moving papers. Upon issuance of temporary orders, the court will select the **next** hearing date.

(e) Emergency Situations – Temporary Orders without Prior Notice or Hearing. Temporary orders will only be granted without prior notice to the other party where the application for the temporary orders contains evidence that clearly demonstrates great or irreparable injury will result to the applicant before the matter can be heard on notice or injury will result if prior notice is given. Upon issuance of temporary orders, the court will select the **next** hearing date. (*Eff. 1/1/03; As amended eff. ~~4/4/08~~ 7/1/09.*)

5.4 Filing Family Law Motions with the Court (*Eff. 1/1/03; As amended eff. ~~7/1/05~~ 7-1-09*)

(a) Filing of Applications for Orders. The moving party must file the moving papers, including application, declaration(s), points and authorities, proposed order(s) and any other supporting documents, by mail or hand delivery to the court's filing window at a time no less than sixteen (16) court days prior to the hearing unless the court has granted an order shortening time or temporary orders. Motions or orders to show cause involving child custody and visitation, where no temporary orders have issued, must generally be filed approximately ~~forty five (45)~~ **thirty (30)** days prior to the date of hearing so that mediation may be completed prior to the hearing.

(b) Responsive Pleadings. The responding party generally must file any responsive pleadings, including declarations, objections and / or points and authorities, with the court no less than nine (9) court days prior to the date of hearing unless the court specifically ordered another time for filing.

(c) Proof of Service. The moving party is advised to file the proof of service of the moving party's pleadings with the court at the time of filing the motion, and when that is not possible the proof of service must be filed with the court no less than five (5) calendar days before the hearing. If no timely proof of service has been filed and no responsive pleadings or stipulations are in file, the court may drop the matter from the calendar.

(d) Financial Declarations. A completed Income and Expense Declaration, Financial Statement (Simplified), and / or Property Declaration must be attached to and filed with any application for order when relevant to the relief requested. Such financial declarations, even where no change of circumstances are alleged, are deemed current only if executed within 90 days of the hearing determining the relief requested.

(e) Medical, Psychological or Educational Reports. Medical, psychological, educational or other types of reports concerning the child shall not be attached to motions filed with court, but shall be provided to the court at the time of hearing. Such reports or documentation not filed with the court, which a party intends to present to the court and rely upon at the hearing, must have been served on the other parties with the moving, responding or reply papers in accordance with applicable law and these Local Rules. No reports or documents submitted by a party will be considered by the court unless there is a stipulation or a proper evidentiary foundation is established. (*Eff. 1/1/03; As amended eff. ~~7/1/05~~ 7-1-09*)

5.51 Juvenile Facsimile Filings (Eff. 1/1/01; As amended eff. 7/1/09.)

The court does not accept the direct **fax** filing of documents pursuant to California Rules of Court, Rule 2.304 or Rule 5.522 except upon exceptional circumstances and after obtaining leave of court. (Eff. 1/1/01; As amended eff. 7/1/09.)

8.1 Appellate Department Management (Eff. 7/1/98; *As amended, eff. ~~4/1/06~~ 7/1/09.*)

The Presiding Judge of the Appellate Department of the Superior Court shall supervise the business of the department. All motions, including ex parte applications for orders, shall be presented to the Presiding Judge of the Appellate Division. The Presiding Judge may act on routine matters, or may schedule a motion or other matter for hearing before the panel at his or her discretion.

All final rulings on the merits of limited jurisdiction civil and criminal appeals are decided by a majority of a three-judge panel of the Appellate Department of the Superior Court, except that appeals of traffic infraction cases are heard by one judge of the Appellate Department, **pursuant to Code of Civil Procedure Section 77(h)**. (Eff. 7/1/98; *As amended, eff. ~~4/1/06~~ 7/1/09.*)

8.4 Record in Infraction Appeals. (Eff. 7/1/09.)

Preparation of Clerk's Transcript: Pursuant to Rule 8.914 of the California Rules of Court, the original trial court file will be used instead of a clerk's transcript.

Record of Oral Proceedings: Parties may use an official electronic recording of the trial court proceedings as the record of the oral proceedings without being transcribed.

Where the appellant elects to proceed with a record of the oral proceedings in the trial court and elects to use an official electronic recording of the proceedings under this rule, the parties will be deemed to have stipulated to the use of the official electronic recording as the settled statement unless the respondent files an objection within 10 (ten) days of being served with the designation of the record. The court will prepare the official electronic recording at no cost to the appellant or respondent.

Where the appellant elects to use a transcript of the official electronic recording of the proceedings as the record of oral proceedings, the appellant must follow the process and pay the costs as required under Rule 8.917(d) of the California Rules of Court. (Eff. 7/1/09.)

8.3 Briefing Procedure - Renumbered to 8.5

8.4 Prerogative Writs – Renumbered to 8.6